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REFERENCE TITLE: **transportation peace officers; retirement**

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

SB 1323

Introduced by
Senator Mitchell

AN ACT

**AMENDING SECTIONS 28-369, 38-842 AND 38-847, ARIZONA REVISED STATUTES;
RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-369, Arizona Revised Statutes, is amended to
3 read:

4 28-369. Law enforcement powers; ports of entry; violation;
5 classification

6 A. The director and officers, agents and employees of the department
7 or local or state law enforcement agencies ~~THAT~~ the director designates are
8 peace officers. The director may designate:

9 1. Regular peace officers with like authority of other peace officers
10 of this state or cities and towns of this state.

11 2. Specialty peace officers whose powers are limited to the
12 enforcement of motor vehicle laws and rules.

13 B. The director and designated officers, agents and employees may
14 exercise the powers prescribed in subsection A of this section throughout
15 this state.

16 C. ~~A PERSON WHO IS DESIGNATED AS~~ a regular peace officer ~~designated~~
17 pursuant to subsection A, paragraph 1 of this section~~+~~

18 ~~1. Shall meet the minimum qualifications established for peace~~
19 ~~officers~~ ~~SHALL ATTAIN CERTIFIED PEACE OFFICER STATUS~~ pursuant to section
20 41-1822.

21 ~~2. Except as provided in title 38, chapter 5, article 4, is not~~
22 ~~eligible to participate in the public safety personnel retirement system.~~

23 D. This section does not preempt the authority and jurisdiction of
24 established agencies and political subdivisions of this state.

25 E. A peace officer as defined in section 41-1701 or a peace officer
26 designated in subsection A of this section may require a vehicle that is
27 subject to the fee in section 28-5433 or the requirements of sections 28-2321
28 through 28-2324 to stop at a port of entry in this state for the purpose of
29 enforcing a motor vehicle law prescribed in this title. A person who fails
30 to stop as required by this subsection is guilty of a class 1 misdemeanor.

31 Sec. 2. Section 38-842, Arizona Revised Statutes, is amended to read:

32 38-842. Definitions

33 In this article, unless the context otherwise requires:

34 1. "Accidental disability" means a physical or mental condition which
35 the local board finds totally and permanently prevents an employee from
36 performing a reasonable range of duties within the employee's job
37 classification and was incurred in the performance of the employee's duty. A
38 finding of accidental disability shall be based on medical evidence by a
39 doctor or clinic appointed by the local board pursuant to section 38-847,
40 subsection D, paragraph 9 which establishes an accidental disability.
41 Material conflicts in medical evidence shall be resolved by the findings of
42 the local board.

43 2. "Accumulated contributions" means, for each member, the sum of the
44 amount of the member's aggregate contributions made to the fund and the
45 amount, if any, attributable to the employee's contributions prior to the

member's effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.

3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the fund manager. The fund manager may from time to time change the mortality and interest assumptions.

4. "Average monthly benefit compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. The considered period shall be the three consecutive years within the last twenty completed years of credited service which yield the highest average. In the computation under this paragraph a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

5. "Certified peace officer" means a peace officer certified by the Arizona peace officers standards and training board.

6. "Claimant" means any member or beneficiary who files an application for benefits pursuant to this article.

7. "Compensation" means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay and holiday pay paid to an employee on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to section 38-843, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for compensatory time or any other payment for fringe benefits.

8. "Credited service" means the member's total period of service prior to the member's effective date of participation, plus those compensated periods of the member's service thereafter for which the member made contributions to the fund.

9. "Depository" means a bank in which all monies of the system are deposited and held and from which all expenditures for benefits, expenses and investments are disbursed.

10. "Effective date of participation" means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system is as specified in the applicable joinder agreement.

11. "Effective date of vesting" means the date a member's rights to benefits vest pursuant to section 38-844.01.

12. "Eligible child" means the unmarried child of a deceased member who is under the age of eighteen or a full-time student who is under the age of

1 twenty-three or under a disability which began before the child attained the
2 age of twenty-three and who remains a dependent of the surviving spouse or
3 guardian.

4 13. "Eligible groups" means only the following who are regularly
5 assigned to hazardous duty:

6 (a) Municipal police officers who are certified peace officers.

7 (b) Municipal fire fighters.

8 (c) Paid full-time fire fighters employed directly by a fire district
9 organized pursuant to section 48-803 or 48-804 with three or more full-time
10 fire fighters, but not including fire fighters employed by a fire district
11 pursuant to a contract with a corporation.

12 (d) State highway patrol officers who are certified peace officers.

13 (e) State fire fighters.

14 (f) County sheriffs and deputies who are certified peace officers.

15 (g) Fish and game wardens who are certified peace officers.

16 (h) Police officers who are certified peace officers and fire fighters
17 of a nonprofit corporation operating a public airport pursuant to sections
18 28-8423 and 28-8424. A police officer shall be designated pursuant to
19 section 28-8426 to aid and supplement state and local law enforcement
20 agencies and a fire fighter's sole duty shall be to perform fire fighting
21 services, including services required by federal regulations.

22 (i) Police officers who are certified peace officers and who are
23 appointed by the Arizona board of regents.

24 (j) Police officers who are certified peace officers and who are
25 appointed by a community college district governing board.

26 (k) State attorney general investigators who are certified peace
27 officers.

28 (l) County attorney investigators who are certified peace officers.

29 (m) Police officers who are certified peace officers and who are
30 employed by an Indian reservation police agency.

31 (n) Fire fighters who are employed by an Indian reservation fire
32 fighting agency.

33 (o) Police officers who are certified peace officers and who are
34 appointed by the department of administration.

35 (p) Department of liquor licenses and control investigators who are
36 certified peace officers.

37 (q) Arizona department of agriculture officers who are certified peace
38 officers.

39 (r) Arizona state parks board rangers and managers who are certified
40 peace officers.

41 (s) County park rangers who are certified peace officers.

42 (t) DEPARTMENT OF TRANSPORTATION REGULAR PEACE OFFICERS WHO ARE
43 CERTIFIED PEACE OFFICERS.

44 14. "Employee" means any person who is employed by a participating
45 employer and who is a member of an eligible group but does not include any

1 persons compensated on a contractual or fee basis. If an eligible group
2 requires certified peace officer status and at the option of the local board,
3 employee may include a person who is training to become a certified peace
4 officer.

5 15. "Employers" means:

6 (a) Cities contributing to the fire fighters' relief and pension fund
7 as provided in sections 9-951 through 9-971 or statutes amended thereby and
8 antecedent thereto, as of June 30, 1968 on behalf of their full-time paid
9 fire fighters.

10 (b) Cities contributing under the state police pension laws as
11 provided in sections 9-911 through 9-934 or statutes amended thereby and
12 antecedent thereto, as of June 30, 1968 on behalf of their municipal
13 policemen.

14 (c) The state highway patrol covered under the state highway patrol
15 retirement system.

16 (d) The state, or any political subdivision thereof, including but not
17 limited to towns, cities, fire districts, counties and nonprofit corporations
18 operating public airports pursuant to sections 28-8423 and 28-8424, which has
19 elected to participate in the system on behalf of an eligible group of public
20 safety personnel pursuant to a joinder agreement entered into after July 1,
21 1968.

22 (e) Indian tribes which have elected to participate in the system on
23 behalf of an eligible group of public safety personnel pursuant to a joinder
24 agreement entered into after July 1, 1968.

25 16. "Fund" means the public safety personnel retirement fund, which is
26 the fund established to receive and invest contributions accumulated under
27 the system and from which benefits are paid.

28 17. "Fund manager" means the fund manager of the system, who are the
29 persons appointed to invest and operate the fund.

30 18. "Local board" means the retirement board of the employer, who are
31 the persons appointed to administer the system as it applies to their members
32 in the system.

33 19. "Member" means any employee who meets all of the following
34 qualifications:

35 (a) Who is either a full-time paid municipal police officer, a
36 full-time paid fire fighter, a law enforcement officer who is employed by the
37 state including the director thereof, a state fire fighter who is primarily
38 assigned to fire fighting duties, a fire fighter or police officer of a
39 nonprofit corporation operating a public airport pursuant to sections 28-8423
40 and 28-8424, all ranks designated by the Arizona law enforcement merit system
41 council, a state attorney general investigator who is a certified peace
42 officer, a county attorney investigator who is a certified peace officer, a
43 police officer who is appointed by the department of administration and who
44 is a certified peace officer, a department of liquor licenses and control
45 investigator who is a certified peace officer, an Arizona department of

1 agriculture officer who is a certified peace officer, an Arizona state parks
2 board ranger or manager who is a certified peace officer, A DEPARTMENT OF
3 TRANSPORTATION REGULAR PEACE OFFICER WHO IS A CERTIFIED PEACE OFFICER, a
4 county park ranger who is a certified peace officer, a person who is a
5 certified peace officer and who is employed by an Indian reservation police
6 agency, a fire fighter who is employed by an Indian reservation fire fighting
7 agency or an employee included in a group designated as eligible employees
8 under a joinder agreement entered into by their employer after July 1, 1968
9 and who is or was regularly assigned to hazardous duty.

10 (b) Who, on or after the employee's effective date of participation,
11 is receiving compensation for personal services rendered to an employer or
12 would be receiving compensation except for an authorized leave of absence.

13 (c) Whose employment with an employer commenced prior to attainment of
14 age fifty.

15 (d) Whose customary employment is at least forty hours per week and
16 for more than six months in a calendar year.

17 (e) Who has not attained age sixty-five prior to the employee's
18 effective date of participation or who was over age sixty-five with
19 twenty-five years or more of service prior to the employee's effective date
20 of participation.

21 20. "Normal retirement date" means the first day of the calendar month
22 immediately following an employee's completion of twenty years of service or
23 the employee's sixty-second birthday and the employee's completion of fifteen
24 years of service.

25 21. "Ordinary disability" means a physical condition which the local
26 board determines will prevent an employee totally and permanently from
27 performing a reasonable range of duties within the employee's department or a
28 mental condition which the local board determines will prevent an employee
29 totally and permanently from engaging in any substantial gainful activity. A
30 finding of ordinary disability shall be based on medical evidence by a doctor
31 or clinic appointed by the local board pursuant to section 38-847, subsection
32 D, paragraph 9 satisfactory to the local board which establishes an ordinary
33 disability. Material conflicts in medical evidence shall be resolved by the
34 findings of the local board.

35 22. "Pension" means a series of monthly amounts which are payable to a
36 person who is entitled to receive benefits under the plan.

37 23. "Regularly assigned to hazardous duty" means regularly assigned to
38 duties of the type normally expected of municipal police officers, municipal
39 or state fire fighters, eligible fire district fire fighters, state highway
40 patrol officers, county sheriffs and deputies, fish and game wardens, fire
41 fighters and police officers of a nonprofit corporation operating a public
42 airport pursuant to sections 28-8423 and 28-8424, police officers who are
43 appointed by the Arizona board of regents or a community college district
44 governing board, state attorney general investigators who are certified peace
45 officers, county attorney investigators who are certified peace officers,

1 police officers who are appointed by the department of administration and who
2 are certified peace officers, department of liquor licenses and control
3 investigators who are certified peace officers, Arizona department of
4 agriculture officers who are certified peace officers, Arizona state parks
5 board rangers and managers who are certified peace officers, ~~DEPARTMENT OF~~
6 ~~TRANSPORTATION REGULAR PEACE OFFICERS WHO ARE CERTIFIED PEACE OFFICERS,~~
7 county park rangers who are certified peace officers, police officers who are
8 certified peace officers and are employed by an Indian reservation police
9 agency or fire fighters who are employed by an Indian reservation fire
10 fighting agency. Those individuals who are assigned solely to support duties
11 such as secretaries, stenographers, clerical personnel, clerks, cooks,
12 maintenance personnel, mechanics and dispatchers are not assigned to
13 hazardous duty regardless of their position classification title. Since the
14 normal duties of ~~municipal police officers, municipal or state fire fighters,~~
15 ~~eligible fire district fire fighters, state highway patrol officers, county~~
16 ~~sheriffs and deputies, fish and game wardens, fire fighters and police~~
17 ~~officers of a nonprofit corporation operating a public airport pursuant to~~
18 ~~sections 28-8423 and 28-8424, police officers who are appointed by the~~
19 ~~Arizona board of regents or a community college district governing board,~~
20 ~~state attorney general investigators who are certified peace officers, county~~
21 ~~attorney investigators who are certified peace officers, police officers who~~
22 ~~are appointed by the department of administration and who are certified peace~~
23 ~~officers, department of liquor licenses and control investigators who are~~
24 ~~certified peace officers, Arizona department of agriculture officers who are~~
25 ~~certified peace officers, Arizona state parks board rangers and managers who~~
26 ~~are certified peace officers, county park rangers who are certified peace~~
27 ~~officers, police officers who are certified peace officers and are employed~~
28 ~~by an Indian reservation police agency and fire fighters who are employed by~~
29 ~~an Indian reservation fire fighting agency are~~ ~~AN EMPLOYEE OF AN ELIGIBLE~~
30 ~~GROUP ARE~~ constantly changing, questions as to whether a person is or was
31 previously regularly assigned to hazardous duty shall be resolved by the
32 local board on a case-by-case basis. Resolutions by local boards are subject
33 to rehearing and appeal.

34 24. "Retirement" means termination of employment after a member has
35 fulfilled all requirements for a pension. Retirement shall be considered as
36 commencing on the first day of the month immediately following a member's
37 last day of employment or authorized leave of absence, if later.

38 25. "Service" means the last period of continuous employment of an
39 employee by the employers prior to the employee's retirement or the
40 employee's sixty-fifth birthday, whichever first occurs, except that if such
41 period includes employment during which the employee would not have qualified
42 as a member had the system then been effective, such as employment as a
43 volunteer fire fighter, then only twenty-five per cent of such noncovered
44 employment shall be considered as service. Any absence which is authorized
45 by an employer shall not be considered as interrupting continuity of

1 employment if the employee returns within the period of authorized absence.
2 Transfers between employers also shall not be considered as interrupting
3 continuity of employment. Any period during which a member is receiving sick
4 leave payments or a temporary disability pension shall be considered as
5 service. Any period during which a person was employed as a full-time paid
6 fire fighter by a fire district pursuant to a contract with a corporation
7 within that fire district shall be considered as service if it is part of the
8 person's last period of continuous employment with that corporation in that
9 fire district and the fire district has elected to treat the period as
10 service in its applicable joinder agreement. Any reference in this system to
11 the number of years of service of an employee shall be deemed to include
12 fractional portions of a year.

13 26. "State" means the state of Arizona, including any department,
14 office, board, commission, agency or other instrumentality of the state.

15 27. "System" means the public safety personnel retirement system
16 established by this article.

17 28. "Temporary disability" means a physical or mental condition which
18 the local board finds totally and temporarily prevents an employee from
19 performing a reasonable range of duties within the employee's department and
20 which was incurred in the performance of the employee's duty. A finding of
21 disability shall be based on medical evidence by a doctor or clinic appointed
22 by the local board pursuant to section 38-847, subsection D, paragraph 9
23 which establishes a temporary disability. Material conflicts in medical
24 evidence shall be resolved by the findings of the local board.

25 Sec. 3. Section 38-847, Arizona Revised Statutes, is amended to read:
26 38-847. Local boards

27 A. The administration of the system and responsibility for making the
28 provisions of the system effective for each employer are vested in a local
29 board. The department of public safety, the Arizona game and fish
30 department, the department of emergency and military affairs, the university
31 of Arizona, Arizona state university, northern Arizona university, each
32 county sheriff's office, each county attorney's office, each county parks
33 department, each municipal fire department, each eligible fire district, each
34 community college district, each municipal police department, the department
35 of law, the department of administration, the department of liquor licenses
36 and control, the Arizona department of agriculture, the Arizona state parks
37 board, THE DEPARTMENT OF TRANSPORTATION, each Indian reservation police
38 agency and each Indian reservation fire fighting agency shall have a local
39 board. A nonprofit corporation operating pursuant to sections 28-8423 and
40 28-8424 shall have one board for all of its members. Each local board shall
41 be constituted as follows:

42 1. For political subdivisions or Indian tribes, the mayor or chief
43 elected official or a designee of the mayor or chief elected official
44 approved by the respective governing body as chairman, two members elected by
45 secret ballot by members employed by the appropriate employer and two

1 citizens, one of whom shall be the head of the merit system if it exists for
 2 the group of members, appointed by the mayor or chief elected official and
 3 with the approval of the governing body of the city or the governing body of
 4 the employer. The appointed two citizens shall serve on both local boards in
 5 a city or Indian tribes where both fire and police department employees are
 6 members.

7 2. For state agencies and nonprofit corporations operating pursuant to
 8 sections 28-8423 and 28-8424, two members elected by secret ballot by members
 9 employed by the appropriate employer and three citizens appointed by the
 10 governor. Each state agency local board shall elect a chairman.

11 3. For fire districts organized pursuant to section 48-804, the
 12 secretary-treasurer as chairman, two members elected by secret ballot by
 13 members employed by the fire district and two citizens appointed by the
 14 secretary-treasurer, one of whom is a resident of the fire district and one
 15 of whom has experience in personnel administration but who is not required to
 16 be a resident of the fire district.

17 B. Upon the taking effect of this system for an employer, the
 18 appointments and elections of board members shall take place with one
 19 elective and appointive board member serving a term ending two years after
 20 the effective date of participation for the employer and other local board
 21 members serving a term ending four years after the effective date.
 22 Thereafter, every second year, and as a vacancy occurs, an office shall be
 23 filled for a term of four years in the same manner as previously provided.

24 C. Each member of a local board ~~shall~~, within ten days after the
 25 member's appointment or election, **SHALL** take an oath of office that, so far
 26 as it devolves upon the member, the member shall diligently and honestly
 27 administer the affairs of the local board and that the member shall not
 28 knowingly violate or willingly permit to be violated any of the provisions of
 29 law applicable to the system.

30 D. Except as limited by subsection E of this section, a local board
 31 shall have such powers as may be necessary to discharge the following duties:

32 1. To decide all questions of eligibility and service credits, and
 33 determine the amount, manner and time of payment of any benefits under the
 34 system.

35 2. To prescribe procedures to be followed by claimants in filing
 36 applications for benefits.

37 3. To make a determination as to the right of any claimant to a
 38 benefit and to afford any claimant or the fund manager, or both, a right to a
 39 rehearing on the original determination.

40 4. To request and receive from the employers and from members such
 41 information as is necessary for the proper administration of the system and
 42 action on claims for benefits and to forward such information to the fund
 43 manager.

1 5. To distribute, in such manner as the local board determines to be
2 appropriate, information explaining the system received from the fund
3 manager.

4 6. To furnish the employer, the fund manager, and the legislature,
5 upon request, with such annual reports with respect to the administration of
6 the system as are reasonable and appropriate.

7 7. To receive and review the actuarial valuation of the system for its
8 group of members.

9 8. To receive and review reports of the financial condition and of the
10 receipts and disbursements of the fund from the fund manager.

11 9. To appoint medical boards as provided in section 38-859.

12 10. To sue and be sued to effectuate the duties and responsibilities
13 set forth in this article.

14 E. A local board shall have no power to add to, subtract from, modify
15 or waive any of the terms of the system, change or add to any benefits
16 provided by the system or waive or fail to apply any requirement of
17 eligibility for membership or benefits under the system.

18 F. A local board ~~shall~~, from time to time, **SHALL** establish and adopt
19 such rules as it deems necessary or desirable for its administration. All
20 rules and decisions of a board shall be uniformly and consistently applied to
21 all members in similar circumstances.

22 G. Any action by a majority vote of the members of a local board which
23 is not inconsistent with the provisions of the system shall be final,
24 conclusive and binding upon all persons affected by it unless a timely
25 application for a rehearing or appeal is filed as provided in this article.

26 H. A claimant or the fund manager may apply for a rehearing before the
27 local board within the time period prescribed in this subsection. An
28 application for a rehearing shall be filed in writing with a member of the
29 local board or its secretary within sixty days after:

30 1. The applicant-claimant receives notification of the local board's
31 original action by certified mail, by attending the meeting at which the
32 action is taken or by receiving benefits from the system pursuant to the
33 local board's original action, whichever occurs first.

34 2. The applicant-fund manager receives notification of the local
35 board's original action by certified mail or by receipt of written directions
36 from the local board pursuant to its original action, whichever occurs first.

37 I. A hearing before a local board on a matter remanded from the
38 superior court is not subject to a rehearing before the local board.

39 J. Decisions of local boards are subject to judicial review pursuant
40 to title 12, chapter 7, article 6.

41 K. When making a ruling, determination or calculation, the local board
42 shall be entitled to rely upon information furnished by the employer, the
43 fund manager, independent legal counsel, ~~or~~ or the actuary for the system.

1 L. Each member of a local board is entitled to one vote. A majority
2 of the appointed and elected members is necessary for a decision by the
3 members of a local board at any meeting of the local board.

4 M. The local board shall adopt such bylaws as it deems desirable. The
5 local board shall elect a secretary who may, but need not, be a member of the
6 local board. The secretary of the local board shall keep a record and
7 prepare minutes of all meetings, forward the minutes to the fund manager
8 within forty-five days after each meeting and forward all necessary
9 communications to the fund manager.

10 N. The fees of the medical board and of local legal counsel and all
11 other expenses of the local board necessary for the administration of the
12 system shall be paid by the employer at such rates and in such amounts as the
13 local board shall approve.

14 O. The local board shall issue directions to the fund manager
15 concerning all benefits which are to be paid from the employer's account
16 pursuant to the provisions of the fund. The local board shall keep on file,
17 in such manner as it may deem convenient or proper, all reports from the fund
18 manager and the actuary.

19 P. The local board and the individual members of the local board shall
20 be indemnified from the assets of the employer's account in the fund against
21 any and all liabilities arising by reason of any act, or failure to act, made
22 in good faith pursuant to the provisions of the system, including expenses
23 reasonably incurred in the defense of any claim relating to the act or
24 failure to act.